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SAMPLE

**INTELLECTUAL PROPERTY
LICENCE AGREEMENT**

between

STORM WARNING TECHNOLOGY LTD (ACN 123 999 999)

and

ALL HANDS ON DECK PTY LTD (ACN 999 999 123)

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Date

Parties

Licensor	STORM WARNING TECHNOLOGY LTD (ACN 123 999 999) Address: 999 Lightning Road, Thunder Creek NSW 2999 Email: warning@stormdeck.com (the <i>Licensor</i>)
Licensee	ALL HANDS ON DECK PTY LTD (ACN 999 999 123) Address: Australian Technology Park, Locomotive Street, South Eveleigh NSW 2015 Email: allhands@stormdeck.com (the <i>Licensee</i>)

Recitals

- A The Licensor has created or otherwise acquired the Relevant IP.
- B The parties have agreed that the Licensor will provide the Licensee with a licence to Exploit the Relevant IP in Australia in accordance with the terms of this agreement.
- C This agreement is intended to be legally binding and the parties agree to give effect to the arrangements contemplated by it.

Operative provisions

1. Definitions and interpretation

Definitions

- 1.1 The following definitions apply in this agreement unless the context requires otherwise:

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in Sydney, New South Wales are open for business.

Change of Control means, in respect of a particular entity, a person who Controls that entity ceasing to do so or another person acquiring Control of it.

Control has the meaning given in Section 50AA of the Corporations Act.

Claim means any claim, complaint, demand, proceeding, suit, litigation, action, cause of action or other legal recourse (whether in contract, tort, under statute or otherwise).

Completion means the completion of the transactions contemplated by this agreement in accordance with clause 7.

Completion Date means the date on which the Conditions Precedent are satisfied or waived in accordance with this agreement.

Completion Place means the offices of the Licensor or any other place agreed in writing by the parties.

Completion Time means 11:00 AM, or any other time of day agreed in writing by the parties, on the Completion Date.

Conditions Precedent means the conditions precedent to Completion set out in Schedule 1.

Confidential Information means all information provided by one party to the other in connection with this agreement, where such information is identified as confidential at the time of its disclosure or ought reasonably be considered confidential based on its content or nature or the manner of its disclosure, but excluding information that:

- (a) enters the public domain, or is disclosed to a party by a third party, other than through a breach of this agreement; or
- (b) is developed independently by a party.

Connected means, in respect of two or more Licensor Warranty Claims, that they arise out of the occurrence of the same event or otherwise relate to substantially similar facts, matters or circumstances.

Controller has the meaning given in the Corporations Act.

Copyright Act means the Copyright Act 1968 (Cth).

Corporations Act means the *Corporations Act 2001* (Cth).

Disclosed means, in respect of the making/giving of a Licensor Warranty at a Warranty Time, fairly disclosed to the Licensee by or on behalf of the Licensor in writing prior to that Warranty Time, with sufficient detail such that a prudent purchaser in the position of the Licensee, and possessing its experience of the industries and markets in which the Licensor operates, ought reasonably be able to identify (including by way of inference) the nature, scope and implications of the matter disclosed.

Dispose means, in relation to any right, benefit or property, to sell, assign, transfer, alienate or create a trust or Encumbrance over or in respect of the right, benefit or property.

Documentation means all information (however recorded or preserved) relating to any Relevant IP (including manuals, notes, user guides, functional and technical drawings, specifications, data, reports, designs, modification manuals, flow charts and listings that are designed to assist or supplement the development, understanding or Exploitation of the Relevant IP and, in respect of the Software, includes all Source Code and Object Code.)

Encumbrance means any mortgage, charge (fixed or floating), pledge, lien, hypothecation, guarantee, trust, right of set-off or other third party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind, howsoever created or arising, or any other agreement or arrangement (including a sale and repurchase agreement) having similar effect.

Excluded Matter means, in respect of the making/giving of a Warranty at a Warranty Time, any fact, matter, event or circumstance that was:

- (a) Disclosed; or

(b) actually known to the Licensee at that Warranty Time.

Exploit means, in respect of any IP Rights and/or any Documentation relating thereto, to use, employ, apply, distribute, maintain, reproduce, copy or create Improvements of, or otherwise exploit, those IP Rights or written materials or information, in any fields and for any purposes (whether commercial or non-commercial).

Fair Market Value means, in respect of any item that is sold other than for cash, the cash consideration that the seller would realise from an unaffiliated, unrelated buyer in an arm's length sale of an identical item sold in the same quantity, under the same terms and at the same time and place.

Financial Year means:

- (a) the period commencing on the date of this agreement and ending on the next 30 June;
- (b) each period of 12 months commencing on 1 July and ending on the following 30 June during the term of this agreement; and
- (c) the period ending on the date of termination of this agreement and commencing on the preceding 1 July.

Force Majeure Event means any:

- (a) Act of God, including flood, earthquake, windstorm or other natural disaster;
- (b) outbreak or escalation of hostilities (whether or not war has been declared) or any other unlawful act against public order or authority;
- (c) industrial dispute;
- (d) government restraint;
- (e) unavailability, shortage, breakage or failure of essential equipment, communication channels, facilities, machinery or electricity supply (not caused by the relevant party);
- (f) shut down, interruption to or corruption of the internet and/or servers (not caused by the relevant party); or
- (g) other event that is not within reasonable control of the parties and which, by its nature, could not have been foreseen by the relevant party or, if it could have been foreseen, was unavoidable.

Governmental Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

GST has the same meaning given to that expression in the GST Law.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as in force from time to time.

GST Law has the same meaning given to that expression in the GST Act.

Improvements means, in respect of any IP Rights and/or any Documentation relating thereto, any developments, enhancements, modifications, derivatives, updates or other improvements thereof, including any customisations that are made at the request of the Licensee or upon the

direction of the Licensee, even if such customisations incorporate know-how, ideas, requests or suggestions made or provided by the Licensee.

Insolvency Event means, in respect of a particular person, the occurrence of any one or more of the following events in relation to that person:

- (a) for a person that is a body corporate:
 - (i) except for the purpose of a solvent reconstruction or amalgamation:
 - (A) process is filed in a court seeking an order that it be wound up or that a Controller be appointed to it or any of its assets, unless the application is withdrawn, struck out or dismissed within 7 days of it being filed; or
 - (B) an order is made that it be wound up or that a Controller be appointed to it or any of its assets; or
 - (C) a resolution that it be wound up is passed or proposed;
 - (ii) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertakings;
 - (iii) an administrator is appointed to it, a resolution that an administrator be appointed to it is passed or proposed, or any other steps are taken to appoint an administrator to it;
 - (iv) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or members, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise or composition;
 - (v) a reorganisation, moratorium, agreement of company arrangement or other administration involving one or more of its creditors is proposed or effected;
 - (vi) any action is taken by the Australian Securities and Investments Commission with a view to its deregistration or its dissolution, or an application is made to the Australian Securities and Investments Commission that any such action be taken;
 - (vii) it is insolvent within the meaning of section 95A of the Corporations Act, states that it is unable to pay its debts or it is presumed to be insolvent under any applicable law;
 - (viii) as a result of the operation of section 459F(1) of the Corporations Act, it is taken to have failed to comply with a statutory demand;
 - (ix) it stops or suspends or threatens to stop or suspend the payment of all or a class of its debts;
 - (x) any event or circumstance set out in section 461 of the Corporations Act occurs in relation to it; or
 - (xi) anything having a substantially similar effect to any of the events specified in paragraphs (a)(i) to (a)(x) of this definition happens to it under the law of any jurisdiction; and

- (b) for a person that is a natural person:
- (i) a bankruptcy notice is issued against the person;
 - (ii) a receiver or a trustee for creditors or in bankruptcy is appointed to any of the person's property;
 - (iii) the person proposes or enters into an arrangement or composition with, or an assignment for the benefit of, any of the person's creditors;
 - (iv) the person proposes or effects a moratorium involving any of the person's creditors;
 - (v) the person stops or suspends, or threatens to stop or suspend, the payment of all or a class of its debts;
 - (vi) the person is unable to pay all of the person's debts as they fall due or is presumed to be insolvent under any applicable law;
 - (vii) the person becomes an "insolvent under administration" as defined in section 9 of the Corporations Act; or
 - (viii) anything having a substantially similar effect to any of the events specified in paragraphs (b)(i) to (b)(vii) of this definition happens to the person under the law of any jurisdiction.

IP Rights means patents, rights to inventions, copyright and related rights, Moral Rights, trade marks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how, trade secrets and marketing secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Licence means the licence to Exploit the Relevant IP and Documentation provided by the Licensor to the Licensee pursuant to clause 3.

Licensee Warranties means the representations and warranties set out in Schedule 12, which are made and given by the Licensee to the Licensor pursuant to clause 13.

Licensor Warranties means the representations and warranties set out in Schedule 11, which are made and given by the Licensor to the Licensee pursuant to clause 11.

Licensor Warranty Claim means a claim under the Licensor Warranties.

Losses means any loss, damage, debt, cost, charge, expense, fine, outgoing, penalty, diminution in value, deficiency or other liability of any kind or character (including legal and other professional fees and expenses on a full indemnity basis) that a party pays, suffers or incurs or is liable for, including all:

- (a) liabilities on account of Tax;
- (b) interest and other amounts payable to third parties;
- (c) legal and other professional fees and expenses (on a full indemnity basis) and other costs incurred in connection with investigating, defending or settling any Claim, whether or not resulting in any liability; and